Supreme Court, U.S.
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In The

Supreme Court Of The United States

Aurelio O. Gonzalez,

Petitioner,

v.

James V. Crosby, Jr.,
Secretary, Florida Department of Corrections

Respondent.

On Writ Of Certiorari To
The United States Court of Appeals
For The Eleventh Circuit

BRIEF OF THE OFFICE OF THE FEDERAL PUBLIC DEFENDER FOR THE MIDDLE DISTRICT OF TENNESSEE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

Paul R. Bottei
Office Of The Federal Public Defender
Middle District of Tennessee
810 Broadway, Suite 200
Nashville, Tennessee 37203
(615) 736-5047

Question Presented

Whether the court of appeals erred in holding that every Rule 60(b) motion (other than for fraud under (b)(3)) constitutes a prohibited 'second or successive petition' as a matter of law, in square conflict with decisions of this Court and of other circuits

TABLE OF CONTENTS

Question Presented i
Table Of Contents ii
Table Of Authorities iv
Statement Of Amicus vii
Summary of Argument 1

ARGUMENT 2

I. The District Court Has Authority To Grant Equitable Relief From An Unjust Judgment Given Its Inherent Authority Over Its Own Judgments Which Finds Expression Through Fed.R.Civ.P. 60(b), And Which Is Confirmed By 28 U.S.C. §2243 2

A. The District Court Has Inherent Authority Over Its Judgments Which Derives From Article III And Provides Authority To Ensure The Fundamental Justice Of Its Own Judgments 2

B. Fed.R.Civ.P. 60(b) Provides A Vehicle For The Exercise Of A District Court's Inherent Authority 4

C. 28 U.S.C. §2243 Also Confers Upon District Courts A Full Panoply Of Equitable Powers To Do Justice In Habeas Proceedings 5

D. Article III, Fed.R.Civ.P. 60(b), and 28 U.S.C. §2243 All Provide Ample Authority For Federal District Courts To Vacate Unjust Habeas Judgments 6

II. The Eleventh Circuit Has Erroneously Limited Relief From Judgment In Habeas Proceedings To Cases Involving Fraud 7

A. As A Logical Matter, Fraud Is Not The Only Basis For Reopening A Habeas Judgment Under Fed.R.Civ.P. 60(b) 8

B. The AEDPA Can Not And Does Not Limit Relief From Judgment To Cases Of Fraud . 9

1. The AEDPA Does Not By Its Terms Apply To A Motion For Relief Presenting Equitable Grounds For Relief From Judgment 9

2. The AEDPA Cannot And Does Not Constrain A District Court's Inherent Article III Judicial Powers Over Its Judgments 11

3. Given The Separation Of Powers And Principles Of Due Process, Application Of The AEDPA To A Motion For Relief From Judgment Would Be Unconstitutional 12

III. Gonzalez Has Stated Non-Frivolous Grounds For Relief From Judgment, Which Must Be Assessed By The District Court Under The Strictures Of Rule 60(b) 14

CONCLUSION 17

APPENDIX A-1

TABLE OF AUTHORITIES

CASES

In Re Abdur'Rahman,
392 F.3d 174 (6th Cir. 2004) 6, 9, 10, 16

Abdur'Rahman v. Bell, 537 U.S. 88 (2002) 16

Agostini v. Felton, 521 U.S. 203 (1997) 9, 15

Artuz v. Bennett, 531 U.S. 4 (2000) 15, 16

Bronson v. Schulten,
104 U.S. (14 Otto) 410 (1881) 2

Calderon v. Thompson, 523 U.S. 538 (1998) 10

Chambers v. Nasco, Inc., 501 U.S. 32 (1991) 11

City of Boerne v. Flores, 521 U.S. 507 (1997) 11

Cooper v. Oklahoma, 517 U.S. 348 (1996) 14

Darr v. Burford, 339 U.S. 200 (1950) 14

Fay v. Noia, 372 U.S. 391 (1963) 14

Gonzalez v. Secretary,
366 F.3d 1253 (11th Cir. 2004)(en banc) . . . 10, 12, 13, 15

Hecht Co. v. Bowles, 321 U.S. 321 (1944) 3

Klaprott v. United States, 335 U.S. 601 (1949) 4, 6, 15

Liljeberg v. Health Services Acquisition Corp.,
486 U.S. 847 (1988) 4, 14, 15

Marine Insurance Co. of Alexandria v. Hodgson,
11 U.S. (7 Cranch) 332 (1813) 3

Meredith v. Winter Haven, 320 U.S. 228 (1943) 3

Pierce v. Cook & Co.,
518 F.2d 720 (10th Cir.1975) 4

Plaut v. Spendthrift Farm, 514 U.S. 211 (1995) 4, 5, 13

Preiser v. Rodriguez, 411 U.S. 475 (1973) 5

Ritter v. Smith, 811 F.2d 1398 (11th Cir. 1987) 7, 9, 16

Radack v. Norwegian America Line Agency,
318 F.2d 538 (2d Cir. 1963) 4

Rodriguez v. Mitchell, 252 F.3d 191 (2d Cir. 2001) . . . 7, 14

Rodwell v. Pepe, 324 F.3d 66 (1st Cir. 2003) 10

Rufo v. Inmates of Suffolk Co. Jail,
502 U.S. 367 (1992) 15, 16

Storti v. Massachusetts, 183 U.S. 138 (1901) 6

United States v. Klein,
80 U.S. (13 Wall.) 128 (1872) 13

United States v. Ohio Power Co.,
353 U.S. 98 (1957)(per curiam) 2

United States v. Sioux Nation of Indians,
448 U.S. 371 (1980) 12, 13

Wingo v. Wedding, 418 U.S. 461 (1974) 6

CONSTITUTIONAL PROVISIONS STATUTES AND RULES

U.S.Const. Art. III ..... *passim*

28 U.S.C. §2243 ..... *passim*

28 U.S.C. §2244(b)(1) 10, 12, 13, 14

28 U.S.C. §2444(b)(2) 10

28 U.S.C. §2254 ..... 10, 13

Fed. R. Civ. P. 60(b) ..... *passim*

U.S. Rev. Stat. §761 (repealed) 5

OTHER SOURCES

Joseph Story, Commentaries On Equity Jurisprudence
As Administered In England And America
(Boston: Little, Brown & Co., 1918, W.H. Lyon, ed.) 2, 3

STATEMENT OF INTEREST OF *AMICUS CURIAE*[1]

The Office of the Federal Public Defender for the Middle District of Tennessee represents indigent petitioners in habeas corpus proceedings. It has had extensive experience in litigating motions for relief from judgment in habeas proceedings. Given that experience, the Office files this brief as *amicus curiae*.

The Office of the Federal Public Defender has received the written consent of both the Petitioner and Respondent to file its brief *amicus curiae* in this matter.

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[1] No counsel for any party to this matter has authored any part of this brief. No other person or entity has made any monetary contribution to the preparation or submission of this brief.

SUMMARY OF ARGUMENT

Under Article III of the Constitution, a United States District Court has inherent equitable powers to grant relief from judgment. While those powers find expression through Fed.R.Civ.P. 60(b), in habeas cases, 28 U.S.C. §2243 also confers a full panoply of equitable powers. Given Article III, Rule 60(b) and 28 U.S.C. §2243, a District Court in a habeas proceeding has ample power to grant relief from judgment. Thus, as the Second Circuit held in *Rodriguez v. Mitchell*, a motion filed under Rule 60(b) which raises grounds for equitable relief is to be considered as such. It is not a second or successive claim for habeas corpus relief.

The Eleventh Circuit has erroneously concluded that fraud is the only basis for relief from a habeas judgment, believing this conclusion compelled by the Antiterrorism And Effective Death Penalty Act of 1996 (AEDPA).

This conclusion is flawed for numerous reasons. First, a federal judgment may be unjust for any number of reasons, not just fraud. Second, the AEDPA does not by its terms apply to a motion presenting grounds for equitable relief under Rule 60(b). Third, the AEDPA cannot and does not constrain a District Court's inherent Article III powers: the AEDPA cannot limit inherent Judicial powers, and Congress never repealed Rule 60(b) or 28 U.S.C. §2243 when passing the AEDPA. Fourth, application of 28 U.S.C. §2244(b)(1) to a motion for equitable relief is unconstitutional. It violates the Separation Of Powers and Due Process because it unconstitutionally prescribes the outcome of judicial proceedings, and it imposes a *res judicata* bar in habeas, a bar which offends fundamental principles deeply rooted in the history of the Nation.

Aurelio Gonzalez has presented non-frivolous grounds for equitable relief based on this Court's intervening decision in *Artuz v. Bennett*. Under Article III and Fed.R.Civ.P. 60(b), the District Court must weigh all the equities to determine whether the habeas judgment should be vacated. The judgment of the Eleventh Circuit should be reversed.

ARGUMENT

I. The District Court Has Authority To Grant Equitable Relief From An Unjust Judgment Given Its Inherent Authority Over Its Own Judgments Which Finds Expression Through Fed.R.Civ.P. 60(b), And Which Is Confirmed By 28 U.S.C. §2243

The District Court here has ample power to revisit or revise its judgment, authority which derives from Article III itself, Fed.R.Civ.P. 60(b), and 28 U.S.C. §2243.

A. The District Court Has Inherent Authority Over Its Judgments Which Derives From Article III And Provides Authority To Ensure The Fundamental Justice Of Its Own Judgments

In all cases, a United States District Court has equitable power to revisit and/or revise its own judgments in the interest of fundamental justice. As this Court has long recognized, this equitable power to grant such relief is "founded in the inherent power of the court over its own judgments." Bronson v. Schulten, 104 U.S. (14 Otto) 410, 417 (1881). That inherent power dates to the adoption of Article III itself, which extends federal jurisdiction to all matters of equity. See U.S.Const. Art. III §2. See also United States v. Ohio Power Co., 353 U.S. 98, 99 (1957)(per curiam)(acknowledging Supreme Court's "power over [its] own judgments.")

As Justice Story explained, the essence of the equitable powers conferred upon the District Courts is the power to ensure fundamental justice under the circumstances:

> [O]ne of the most striking and distinctive features of Courts of Equity is that they can adapt their decrees to *all the varieties of circumstances which may arise.*

Joseph Story, Commentaries On Equity Jurisprudence As Administered In England And America, §28, 14th ed. (Boston: Little, Brown & Co., 1918, W.H. Lyon, ed.) p. 24.

When asked to exercise its inherent equitable powers, a District Court has discretion to evaluate a situation in its entirety to reach a fundamentally just outcome:

> The essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case. Flexibility rather than rigidity has distinguished it. The qualities of mercy and practicality have made equity the instrument for nice adjustment and reconciliation between the public interest and private needs as well as between competing private claims.

Hecht Co. v. Bowles, 321 U.S. 321, 329-330 (1944). Put another way, "An appeal to the equity jurisdiction conferred on federal district courts is an appeal to the sound discretion which guides the determinations of courts of equity." Meredith v. Winter Haven, 320 U.S 228, 235 (1943).

Recognizing an Article III tribunal's broad equitable powers, Chief Justice John Marshall acknowledged that a court may grant relief from judgment where a new matter "clearly proves it to be against conscience to execute a judgment, and of which the injured party could not have availed himself" before judgment. Marine Ins. Co. of Alexandria v. Hodgson, 11 U.S. (7 Cranch) 332, 336 (1813). He further emphasized that an Article III court can grant relief where the "equity of the applicant [is] free from doubt," and where a judgment "*would be against conscience for the person who has obtained it to avail himself.*" Id. at 337 (emphasis supplied).

B. Fed.R.Civ.P. 60(b) Provides A Vehicle For The Exercise Of A District Court's Inherent Authority

A District Court's Article III inherent powers over its judgments find expression through the vehicle of Fed.R.Civ.P. 60(b), first adopted in 1938. See Plaut v. Spendthrift Farm, 514 U.S. 211, 256 & n.8 (1995)(Stevens, J., dissenting). Rule 60(b) "does not provide a new remedy at all, but is simply the recitation of pre-existing judicial power." Plaut v. Spendthrift Farm, 514 U.S. at 234-235.

Rather, as this Court has made manifest, Rule 60(b) provides a vehicle by which a District Court may exercise its inherent power over its judgments. This Rule:

> merely reflects and confirms the courts' inherent and discretionary power 'firmly established in English practice long before the foundation of our Republic' to set aside a judgment *whose enforcement would work inequity*.

Plaut, 514 U.S. at 233-234 (emphasis supplied).

Like Article III itself, Rule 60(b) thus provides a "grand reservoir of equitable power to do justice in a particular case." Pierce v. Cook & Co., 518 F.2d 720, 722 (10th Cir. 1975)(en banc), quoting Radack v. Norwegian America Line Agency, Inc., 318 F.2d 538, 542 (2d Cir. 1963). Like Article III, Rule 60(b) "provides courts with authority 'adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice.'" Liljeberg v. Health Servs. Acquisition Corp., 486 U.S. 847 (1988). See also Klaprott v. United States, 335 U.S. 601 , 615 (1949)(Rule 60(b) vests power in courts adequate to enable them to vacate judgments whenever such action is "appropriate to accomplish justice.")

Fed.R.Civ.P. 60(b) establishes parameters for the exercise of such equitable powers. Rule 60(b)(1)-(5) enumerate

specific bases for granting equitable relief from judgment, including, for example: mistake or inadvertence (60(b)(1)); new evidence relevant to the federal judgment (60(b)(2)); fraud, misconduct, or misrepresentation (60(b)(3)); voidness of the judgment (60(b)(4)); and the judgment has been satisfied and/or ought not be enforced prospectively (60(b)(5)). Rule 60(b)(6) is itself "an encompassing reference to 'any other reason justifying relief from the operation of the judgment.'" Plaut, 514 U.S. at 256 (Stevens, J., dissenting).

In subsections (1)-(5), Rule 60(b) thus specifically identifies circumstances in which a judgment may be vacated in the interest of justice, while in subsection (6), the Rule allows District Courts to assess whether circumstances are extraordinary enough to warrant intervention and vacation of a previously-entered judgment.

C. 28 U.S.C. §2243 Also Confers Upon District Courts A Full Panoply Of Equitable Powers To Do Justice In Habeas Proceedings

In addition, in habeas proceedings, a District Court's equitable power over its judgments derives from 28 U.S.C. §2243, which instructs District Courts to decide habeas cases "as law and justice require." Explicit since 1874,[2] this command confirms that habeas courts are endowed with the full panoply of equitable powers necessary to ensure fundamental justice in a particular case. Under §2243:

> *All the freedom of equity procedure is thus prescribed*; and substantial justice, promptly administered, is ever the rule in habeas corpus.

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[2] "Since 1874, the habeas corpus statute has directed the courts to determine the facts and dispose of the case summarily, 'as law and justice require.' Rev.Stat. §761, superseded by 28 U.S.C. §2243." Preiser v. Rodriguez, 411 U.S. 475, 487 (1973).

Storti v. Massachusetts, 183 U.S. 138, 143 (1901)(emphasis supplied).[3]

In habeas proceedings, therefore, 28 U.S.C. §2243 complements a District Court's inherent equitable powers over its judgment which find expression through Fed.R.Civ.P. 60(b). It allows a Court to revise a judgment, should equity so require.

D. Article III, Fed.R.Civ.P. 60(b), and 28 U.S.C. §2243 All Provide Ample Authority For Federal District Courts To Vacate Unjust Habeas Judgments

Taken together, the District Courts' inherent Article III powers over their own judgments, coupled with 28 U.S.C. §2243 and Fed.R.Civ.P. 60(b), provide District Courts a full panoply of powers to vacate a judgment in a habeas proceeding (as in other cases) when "appropriate to accomplish justice." Klaprott v. United States, 335 U.S. at 615.

Just as there may be unfairness in non-habeas cases warranting vacation of a judgment, when similar circumstances occur in a habeas proceeding, a District Court may intervene. This is true so long as a movant raises traditional grounds seeking relief from a federal judgment and does not merely raise a constitutional challenge to a state court conviction.

When a movant presents such traditional grounds for equitable relief, a District Court may exercise its inherent judicial powers to vacate a federal habeas judgment (either for the habeas petitioner *or* the state) when the circumstances are extraordinary enough to warrant relief. See In Re Abdur'Rahman, 392 F.3d 174 (6th Cir. 2004)(en banc)(granting relief from habeas judgment for habeas petitioner given

[3] Section 2243 is substantively identical to the 1874 version of Rev. Stat. §761 discussed in Storti. See Wingo v. Wedding, 418 U.S. 461, 468-469 (1974).

extraordinary circumstances); Ritter v. Smith, 811 F.2d 1398 (11th Cir. 1987)(granting relief from judgment for state in habeas proceedings given extraordinary circumstances).

Thus, as the Second Circuit has held: "A motion under Rule 60(b) to vacate a judgment is not a second or successive habeas petition and should therefore be treated as any other motion under Rule 60(b)." Rodriguez v. Mitchell, 252 F.3d 191, 198 (2d Cir. 2001). This conclusion is correct, given the inherent Article III powers of the District Courts.

II. The Eleventh Circuit Has Erroneously Limited Relief From Judgment In Habeas Proceedings To Cases Involving Fraud

Despite Article III, 28 U.S.C. §2243, and Fed.R.Civ.P. 60(b), the Eleventh Circuit has concluded that, when a habeas judgment is at issue, a District Court may exercise its inherent powers over such a judgment only when there has been fraud upon the court.

In reaching this conclusion, however, the Eleventh Circuit has fundamentally misapprehended the nature of an Article III court's inherent powers over its own judgments. By their very nature, those powers are not limited to cases of fraud.

Further, in creating this artificial limitation, the Eleventh Circuit has relied heavily on what it perceives to be limitations on those inherent powers established by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). The AEDPA, however, has no such effect for numerous reasons: (1) By its terms, the AEDPA simply does not apply to Rule 60(b) motions; (2) The AEDPA did not – and does not – affect Article III, and it did not repeal either 28 U.S.C. §2243 or Fed.R.Civ.P. 60(b); and (3) Application of the AEDPA would violate the Separation of Powers and Due Process of Law.

A. As A Logical Matter, Fraud Is Not The Only Basis For Reopening A Habeas Judgment Under Fed.R.Civ.P. 60(b)

Because a judgment may be unfair for any number of reasons – including those explicitly contained in Rule 60(b) – the Eleventh Circuit has erred by concluding that fraud alone provides a basis for reopening a habeas judgment.

As a majority of the *en banc* Sixth Circuit has cogently explained, in habeas proceedings – as in any other federal proceeding – there is simply no logical basis for limiting relief from judgment to situations involving fraud:

> [There is no] reason for permitting Rule 60(b)(3) motions based on fraud while prohibiting motions brought pursuant to the other provisions enumerated in Rule 60(b). This is puzzling, because fraud is not the only reason to doubt the integrity of a habeas judgment. Rule 60(b)(1), for instance, states that a federal judgment may be reconsidered and vacated if it was based on 'mistake, inadvertence, or excusable neglect.' As the Second Circuit noted, the integrity of a habeas judgment might be called into doubt pursuant to Rule 60(b)(1) where the respondent engaged in unfair surprise by failing to notify the petitioner of the witnesses it planned to call in the habeas hearing [citation omitted]. The dissent in our case offers no reason why fraud on the court would be a valid basis for a Rule 60(b)(3) motion, while such a claim of unfair surprise, filed as a Rule 60(b)(1) motion, would have to be characterized as a second or successive habeas petition. . . . Accordingly, it makes sense to treat both motions pursuant to Rule 60(b).

In Re Abdur'Rahman, 392 F.3d at 180.

That being said, the Eleventh Circuit's attempt to limit relief from judgment to cases of fraud is insupportable as a matter of logic. It also fails to comport with the historical practice of the federal courts, which have granted relief from judgment even when fraud was not at issue. See e.g., Agostini v. Felton, 521 U.S. 203 (1997). On this basis alone, the Eleventh Circuit's conclusion is erroneous.[4]

B. The AEDPA Can Not And Does Not Limit Relief From Judgment To Cases Of Fraud

When limiting relief from judgment in habeas proceedings to cases of fraud, the Eleventh Circuit believed that its result was somehow compelled by the AEDPA. This conclusion is fatally flawed for numerous reasons, given the District Court's inherent Article III powers, which find expression through Rule 60(b).[5]

1. The AEDPA Does Not By Its Terms Apply To A Motion For Relief Presenting Equitable Grounds For Relief From Judgment

First, the AEDPA by its terms does not apply to a motion for relief from judgment seeking to reopen proceedings

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[4] Were the Eleventh Circuit correct, it would also mean that the state could never seek relief from judgment in a habeas proceeding absent proof of fraud by the petitioner. If that were true, then the Eleventh Circuit's granting the state relief from judgment in Ritter v. Smith, 811 F.2d 1398 (11th Cir. 1987) was illegal, as there was no fraud. The execution of Ritter based on that modified federal judgment would also have been illegal.

[5] A chart summarizing the relationship of Article III, 28 U.S.C. §2243, Rule 60(b) and the AEDPA is attached as an appendix to this brief.

under Fed.R.Civ.P. 60(b), when that motion presents traditional equitable grounds seeking relief from judgment.

The AEDPA's provisions only pertain to habeas claims 'presented in a second or successive habeas corpus application under section 2254." See 28 U.S.C. §2244(b)(1) & (b)(2). Section 2244 is thus inapplicable to a motion which is filed under either Article III or Rule 60(b), and which raises *grounds for equitable relief*, i.e., reasons demonstrating unfairness in a previously-entered federal judgment. See Calderon v. Thompson, 523 U.S. 538 (1998)(§2244 inapplicable by its terms to *sua sponte* recall of mandate).

Here, Gonzalez has raised grounds for equitable relief, which do not involve any "direct challenge" to the constitutionality of his state conviction. See e.g., In Re Abdur'Rahman, 392 F.3d at 181; Rodwell v. Pepe, 324 F.3d 66, 70 (1st Cir. 2003). Gonzalez is merely asking to reopen federal proceedings based on an intervening federal decision concerning federal procedural law. He is not directly requesting vacation of a state court judgment or sentence.

Thus, the AEDPA does not by its terms apply to Gonzalez's request for relief, because he is not making a claim for habeas corpus relief. The AEDPA therefore does not limit his ability to seek the relief he requests.[6]

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[6] The Eleventh Circuit also erroneously believed that there is no functional difference between a motion to recall an appellate mandate and a motion for relief from judgment. That is not true. There is a significant distinction: When a District Court acts on a motion for relief from judgment, it acts upon its own judgment and considers whether to reopen or revise that judgment. On the other hand, when an appellate court recalls a mandate, the District Court judgment remains intact. A District Court considering its own judgment is exercising its inherent Article III authority over its own judgment, a power which an appellate court does not have. The Eleventh Circuit properly recognized that a District Court has broader discretion to reopen its own judgment than an appellate court does to recall a mandate. See Gonzalez v. Secretary, 366 F.3d 1253, 1276 (11th Cir. 2004)(en banc).

2. The AEDPA Cannot And Does Not Constrain A District Court's Inherent Article III Judicial Powers Over Its Judgments

Second, even while the AEDPA does not apply by its terms to the situation here, the AEDPA does not constrain a District Court's inherent equitable powers. It cannot do so as a constitutional matter, and the AEDPA has not done so as a practical matter. Indeed, when passing the AEDPA, Congress simply did not repeal either Article III, 28 U.S.C. §2243, or Fed.R.Civ.P. 60(b) – all of which provide a District Court equitable power to grant relief from judgment.

It goes without saying that Congress cannot, by ordinary legislation, override a provision of the Constitution. See e.g., City of Boerne v. Flores, 521 U.S. 507, 529 (1997) (Constitution is paramount superior law, unchangeable by ordinary legislative means). Consequently, it is obvious that Congress did not somehow repeal District Courts' inherent Article III equitable powers when it passed the AEDPA.

And where Fed.R.Civ.P. 60(b) is merely a vehicle for the expression of those Article III powers, Congress is (and was) powerless to repeal those powers as well. Even if Congress sought to eliminate Rule 60(b) as a vehicle for the expression of inherent Article III powers, the Judiciary could still exercise those inherent powers, with or without Rule 60(b).

Even so, "[W]e do not lightly assume that Congress has intended" to abolish either Rule 60(b) or the then 122-year-old §2243 in habeas proceedings when it passed the AEDPA. See Chambers v. Nasco, Inc., 501 U.S. 32, 47 (1991). This is especially true where Congress was aware of those provisions and did nothing to explicitly repeal them. Under the circumstances, it cannot be said that the AEDPA somehow repealed, *sub silentio*, Rule 60(b) in habeas proceedings.

In fact, were that true, Congress would have thereby sought to create an anomalous result: Article III equitable powers would remain fully viable in every case, except those involving habeas proceedings. Yet for that to be true, one would have to assume that Congress, without saying so, implicitly repealed Article III powers in a specific subset of federal cases. Quite apart from Congress' constitutional inability to do so, Congress never actually did so, or even attempted to do so.

Notwithstanding Congress' inability to repeal Article III inherent powers, and Congress' stark silence about repealing §2243 or Rule 60(b) in habeas proceedings, the Eleventh Circuit reasoned that Rule 60(b) had to give way to the AEDPA, because the AEDPA is a statute, while 60(b) is a "rule." See Gonzalez v. Secretary, 366 F.3d 1253, 1269-1270 (11th Cir. 2004)(en banc). This analysis, however, fundamentally misapprehends the issue.

The proper inquiry is not whether the AEDPA trumps a "rule," but whether Article III powers and their vehicle – Rule 60(b) – trump the AEDPA. The answer is obvious: Article III inherent powers which find expression in Rule 60(b) trump the AEDPA.

3. Given The Separation Of Powers And Principles Of Due Process, Application Of The AEDPA To A Motion For Relief From Judgment Would Be Unconstitutional

Third, while the AEDPA doesn't apply and didn't repeal the District Court's powers, the provisions of the AEDPA (specifically 28 U.S.C. §2244(b)(1)) cannot constitutionally be applied here for at least two reasons:

a. It violates Article III and the Separation of Powers for Congress to "prescribe[] a rule of decision in a case

pending before the courts." United States v. Sioux Nation of Indians, 448 U.S. 371, 404 (1980); United States v. Klein, 80 U.S. (13 Wall.) 128 (1872).

In *Klein*, for example, this Court struck down the Act of July 12, 1870, ch. 251, by which Congress purported to order the courts to dismiss certain appeals: "We are directed to dismiss the appeal, if we find that the judgment must be affirmed." Klein, 80 U.S. (13 Wall.) at 146-147. Striking down Congress' mandate of dismissal (a judicial prerogative) as violating the Separation of Powers, Chief Justice Chase explained: "Can we [dismiss the appeal] without allowing that the legislature may prescribe rules of decision to the Judicial Department of the government in cases pending before it?" Id.

Exactly like the unconstitutional statute in *Klein*, through §2244(b)(1) Congress has sought to dictate the outcome of a judicial proceeding by describing the judicial act which courts must undertake: Dismissal of a claim. As in *Klein*, Congress lacks that Judicial Power. Congress cannot tell the Judiciary how to decide a case. It simply cannot dictate the ultimate outcome an Article III proceeding. That, however, is the effect of §2244(b)(1). As in Klein, therefore, §2244(b)(1) is unconstitutional. See Plaut v. Spendthrift Farm, 514 U.S. at 225 (Congress cannot "direct[] what particular steps shall be taken in the progress of a judicial inquiry.")

b. In addition, Section 2244(b)(1) violates Due Process of Law because it purports to impose – for the first time in the history of the Nation – an absolute *res judicata* bar on habeas claims raised in a second §2254 petition. In fact, the Eleventh Circuit correctly notes that §2244(b)(1) purports to establish a "total ban" on federal court review of habeas claims raised in a prior habeas petition. Gonzalez, 366 F.3d at 1269. Such a "total ban," however, is unconstitutional.

Since the writ of habeas corpus was first employed in

1305,[7] "All the authorities agree that *res judicata* does not apply to applications for habeas corpus." Darr v. Burford, 339 U.S. 200, 214-215 (1950). This is so, because "The courts *must be kept open to guard against injustice through judicial error.*" Id. (emphasis supplied).

Because §2244(b)(1) purports to impose an absolute *res judicata* bar to situations involving habeas claims presented in a first habeas proceeding, it violates Due Process: It "offends a principle of justice that is deeply rooted in the traditions and conscience of our people." Cooper v. Oklahoma, 517 U.S. 348, 362 (1996).

Consequently, given the Separation Of Powers and Due Process, 28 U.S.C. §2244(b)(1) cannot, and does not, prohibit relief from judgment in this case.

III. Gonzalez Has Stated Non-Frivolous Grounds For Relief From Judgment, Which Must Be Assessed By The District Court Under The Strictures Of Rule 60(b)

Because Article III and Fed.R.Civ.P 60(b) confer and express inherent judicial powers, and because the AEDPA can not and did not affect those judicial powers, Fed.R.Civ.P. 60(b) remains fully viable in habeas proceedings. See Rodriguez v. Mitchell, 252 F.3d at 191.

Even in habeas cases, however, relief from judgment remains subject to the strictures governing such relief contained in Rule 60(b), which by its nature limits the availability of relief from judgment in habeas proceedings. In particular, "Rule 60(b)(6) relief is . . . neither categorically available nor categorically unavailable," but applies where "the basis for relief . . . is extraordinary." Liljeberg v. Health

[7] This first known instance of the use of the writ was in 1305, the "thirty-third year of Edward I." Fay v. Noia, 372 U.S. 391, 400, 83 S.Ct. 822, 828 (1963).

Services Acquisition Corp., 486 U.S. at 863, 864 & n. 11 (1988); Klaprott v. United States, 335 U.S. 601 (1949). This requires a case-specific inquiry. See e.g., Liljeberg, 486 U.S. at 864-870 (outlining factors governing consideration of 60(b) motion, and granting relief under 60(b)(6) for violation of 21 U.S.C. §455(a) which came to light after judgment).

When a habeas judgment is at issue, therefore, a District Court must carefully examine the equities of the situation to determine whether a judgment denying (or granting) habeas relief is fundamentally just under the circumstances. Compare Rufo v. Inmates of Suffolk Co. Jail, 502 U.S. 367, 393 (1992) (O'Connor, J., concurring)(decisions whether to grant relief under Rule 60(b)(5) are "complex decisions requiring the sensitive balancing of a host of factors.")

In his motion, Gonzalez has stated non-frivolous grounds for equitable relief which fit within the traditional framework of Rule 60(b). Therefore, the District Court must properly weigh all the equities to determine whether it is appropriate to reopen the judgment denying habeas relief and to conduct further proceedings.

In doing so, the District Court must first consider this Court's intervening decision in Artuz v. Bennett, 531 U.S. 4 (2000). As Judge Tjoflat has properly recognized:

> Rule 60(b) is the perfect vehicle for invoking the intervening-change-in-the-law exception to the mandate rule [citation omitted]. In fact, I can think of no procedural rule that is as tailor made for this situation as Rule 60(b)(6).

Gonzalez, 366 F.3d at 1309 (Tjoflat, J., concurring and dissenting). When considering *Artuz*, however, the District Court must consider the fact that "[i]ntervening developments in the law by themselves rarely constitute the extraordinary circumstances required for relief under Rule 60(b)(6)." Agostini v. Felton, 521 U.S. at 239.

Yet while *Artuz* is the starting point for the District

Court's analysis, the District Court must also "balanc[e] . . . a host of [other] factors" to determine whether relief from judgment is appropriate. Rufo v. Inmates of Suffolk Co. Jail, 502 U.S. at 393 (O'Connor, J., concurring).

Thus, the District Court may be required to consider any number of different factors, including, for example: the fairness of Gonzalez's having been denied a hearing on the merits of his habeas petition;[8] the timing of the motion;[9] and whether state and federal policy are being served or disserved by continued enforcement of the prior federal habeas judgment.[10]

While some might complain about allowing Article III courts to exercise their Article III powers over their judgments in habeas proceedings, the plain fact is that to obtain relief from judgment – whether in a habeas case or a non-habeas case – a movant often faces a real burden.

Nevertheless, as in all federal cases, a District Court faced with a motion for relief from judgment can inquire into the equities to determine whether its judgment is fundamentally fair and/or whether a movant has made a sufficient showing to inquire further.

On the facts here, Gonzalez has made a threshold showing that the District Court judgment denying habeas relief is inequitable and should be reconsidered or revised in light of *Artuz*. Because the motion presents grounds for equitable relief specifically contemplated by Rule 60(b), the District Court must be allowed to consider his motion. And, as it would in any non-habeas case, the District Court may properly consider all the equities to determine whether the judgment dismissing Gonzalez's habeas petition should remain intact, reconsidered, or modified in light of all the equities.

CONCLUSION

In light of Article III, 28 U.S.C. §2243, Fed.R.Civ.P. 60(b), given the inapplicability and/or unconstitutionality of the AEPDA, and given this Court's intervening decision in *Artuz*, this Court should hold that the District Court may consider Gonzalez's motion for relief from judgment. This Court should reverse the judgment of the Eleventh Circuit and remand for further proceedings.

Respectfully Submitted,

Paul R. Bottei
Office Of The Federal Public Defender
Middle District of Tennessee
810 Broadway, Suite 200
Nashville, Tennessee 37203
(615) 736-5047

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[8] See e.g., Abdur'Rahman v. Bell, 537 U.S. 88, 90 (2002)(Stevens, J., dissenting)(petitioner denied hearing on his substantive constitutional claim because of erroneous application of procedural bar).

[9] See In Re Abdur'Rahman, 392 F.3d 174, 185 (6th Cir. 2004)(en banc)(60(b) movant filed motion for relief from judgment soon after promulgation of intervening state court rule and therefore acted reasonably).

[10] See In Re Abdur'Rahman, 392 F.3d at 187 (relief from judgment warranted where neither State of Tennessee, federal court, nor petitioner has any interest in execution of federal judgment now shown to be wrong); Ritter v. Smith, 811 F.2d 1398 (11th Cir. 1987)(granting state relief from judgment in habeas case based on equities).

EQUITABLE RELIEF FROM JUDGMENT IN HABEAS PROCEEDINGS

ARTICLE III §2:
Source Of Inherent Equitable Power
To Grant Relief From Judgment

28 U.S.C. §2243:
"As Law And Justice Require":
Since 1874, Confirms District Court's Full Panoply
Of Equitable Powers In Habeas Proceedings

Fed.R.Civ.P. 60(b):
Not A Remedy In Itself:
A Vehicle For Exercise Of Inherent Article III Powers

vs.

AEDPA, 28 U.S.C. §2244
Does Not Apply By Its Terms To Traditional Grounds
For Equitable Relief From Judgment;
Cannot Abrogate Article III Powers;
Does Not Override Or Repeal 28 U.S.C. §2243;
In Habeas Proceedings, Does Not Abrogate 60(b);
§2244(b)(1) Violates Separation Of Powers;
§2244(b)(1) Violates Due Process